

JOE L. TAYLOR, JR., Appellant,	DOCKET NUMBER CH07529110530
v.	
UNITED STATES POSTAL SERVICE, Agency.	DATE: <u>FEB 1 1992</u>

Priscilla Hendricks, Chicago, Illinois, for the agency.

Daniel R. Levinson, Chairman  
Antonio C. Amador, Vice Chairman  
Jessica L. Parks, Member

The appellant has petitioned for review of the September 25, 1991 initial decision affirming his removal for failing to maintain a regular schedule. For the reasons set forth below, the Board DISMISSES the petition as untimely filed.

In his initial decision in this appeal, issued by the Board's Chicago Regional Office, the administrative judge notified the appellant that the initial decision would become



final on October 30, 1991, unless he filed a petition for review with the Clerk of the Board by that date. In addition, the administrative judge stated that this was an important date because it was the last day for filing a petition for review. Since the appellant did not file a petition for review until November 6, 1991, the petition was not timely filed within the Board's thirty-five day regulatory deadline set forth at 5 C.F.R. § 1201.114(d). In his late-filed petition for review, the appellant's representative states that he is "filing this request for review late due to the fact that there was death in [his] family out-of-town." See Petition for Review (PFR) at 1.

By notice dated November 27, 1991, the Board directed the appellant, under 5 C.F.R. § 1201.114(f), to file a motion for waiver of the time limit for filing the petition for review and either an affidavit or a statement, signed under penalty of perjury, stating why there is good cause for the late filing. The appellant submitted a statement for waiver of the time limit signed under penalty of perjury. In the statement, the appellant's representative reiterates the assertion made in the petition for review, that the petition was late because he "had to leave town due to [a] death in [his] family." See PFR File Tab 3. The agency has not responded to the petition for review or the motion for waiver of the time limit.



### ANALYSIS

The Board's regulatory time limit for filing a petition for review may be waived upon a showing of "good cause" under 5 C.F.R. § 1201.114(f). In *Alonzo v. Department of the Air Force*, 4 M.S.P.R. 180 (1980), the Board set forth factors for determining whether good cause for waiving the time limit for filing an appeal has been shown. Applying the relevant factors set forth in *Alonzo*, we find that the appellant has not made a good cause showing here. In this connection, we note that he has not presented any evidence to establish the existence of circumstances beyond his control which affected his ability to comply with the time limit imposed by the Board's regulations, or any other presentation of facts reasonably excusing the failure to file a timely appeal. *Alonzo*, 4 M.S.P.R. at 184.

The appellant has not alleged that he was unaware of the time limit for filing the petition for review. His failure to diligently pursue review with the Board is not such neglectful behavior as might be expected on the part of a reasonably prudent person under the circumstances. See *Alonzo*, 4 M.S.P.R. at 184 n.1. Furthermore, the appellant's reason for his untimely filing does not establish good cause. The appellant alleges that a death in his representative's family and the attendant circumstances were a factor in his untimeliness, but he fails to state when the death occurred, when he left the area, when he returned, and why no one else could have filed in his absence. Nor did he request an



extension prior to the filing deadline. In addition, the appellant could have filed the petition without the assistance of counsel because he received the initial decision which explicitly provided the deadline for petitioning and the instructions on how to request Board review. Although represented, an appellant remains personally responsible for the diligent prosecution of his appeal. See, e.g., *Alexander v. Department of Veterans Affairs*, MSPB Docket No. NY07529110103, slip op. at 4 (Nov. 25, 1991). We find, therefore, that he has failed to establish good cause for his untimely filing. See *Moles v. O.P.M.*, 43 M.S.P.R. 89, 90 (1989) (employee's letter, in which she asserted that a death in her family resulted in the untimely filing of her petition for review, did not establish good cause for her untimely filing).

#### ORDER

This is the final order of the Merit Systems Protection Board regarding the timeliness of the petition for review in this appeal. 5 C.F.R. § 1201.113(c). The initial decision remains the final decision of the Board with regard to the merits of this appeal.

#### NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the



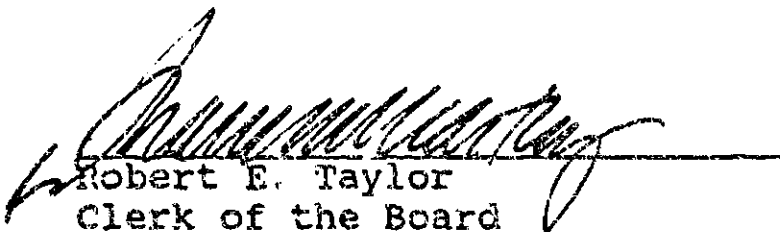
court at the following address:

United States Court of Appeals  
for the Federal Circuit  
717 Madison Place, N.W.  
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Washington, D.C.

  
Robert E. Taylor  
Clerk of the Board